IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.301 OF 2004

Arun Dharma Bacchhav & Anr. .. Appellants

Versus

Aminabai Rasulbhai Mansuri & Anr. Respondents

Mr.P.N.Joshi for appellants

Mr.N.R.Babna for Respondent No.1-a.

CORAM : P.V.KAKADE, J.

DATE : 8TH JUNE, 2005.

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by 1st Ad-hoc Addl. District Judge, Malegaon on 24.10.2003 dismissing the appeal and confirming the order passed by Senior Judge, Senior Division, Malegaon on 9.6.1999 dismissing the plaintiffs suit for declaration and injunction in order

to establish their right of way.

2. I have heard the learned counsel for both the parties. Perused the record.

3. The only question sought to be agitated was in respect of jurisdiction of civil court in order to entertain the suit. The trial court came to the conclusion that the civil court had no jurisdiction when the matter was adjudicated earlier by the Tahsildar under the provision of Mamlatdars' Courts Act. It was observed by the trial court that when there was no illegality in the orders passed by the Revenue Department, Civil Court has no jurisdiction to try the suits on that ground, but, if illegalities are committed while proceeding with the matters civil court have definite jurisdiction. On this basis along with other merits as evidence on record, the suit came to be dismissed. The appeal was carried to the Court of Addl. District Judge, who on the other hand held in categorical terms that the civil court had jurisdiction to entertain and try the dispute irrespective of the fact that there was earlier adjudication by Tahsildar regarding the issue in dispute under the provision of

Mamlatdars' Courts Act. Apart from this aspect the lower appellate court Judge has also come to the conclusion on the basis of the available evidence that the plaintiffs were not entitled to the relief sought for injunction against the defendant for not using the land of Gat No.36 and 40 belonging to the plaintiffs or his right of way.

4. Be as it may, the fact remains that neither the issue of jurisdiction is involved nor any observation is made either of the courts to the effect that the civil court has no jurisdiction to try and entertain the suit. Under these circumstances it must be noted that there is no case made out for interference by this court and there is no substantial question of law involved in this appeal.

5. In the result the appeal stands dismissed.

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